

**ANNUAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2007

INDIANA LEGISLATIVE COUNCIL

2007

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COMMISSION ON COURTS

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Staff

Timothy Tyler
Attorney for the Committee

Mark Goodpaster
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts.

IC 33-23-10-7 charges the Commission with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
4. Review and report on any other matters relating to court administration that the Commission determines appropriate, including the following:
 - a. Court fees.
 - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - d. Jury selection.
 - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - a. A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - i. A draft of legislation implementing the changes.
 - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - iii. Summaries of any research supporting the recommended changes.
 - iv. Summaries of public hearings held concerning the recommended changes.
 - c. A recommendation on any issues considered by the Commission under subdivision (4).

The Legislative Council directed the Commission to study the historical use of Trial Rule 60.5 by courts, its effect on the budgets of civil units of government, and the expenses incurred by units in defending themselves against mandates (SR 68-2007)

II. INTRODUCTION AND REASONS FOR STUDY

The legislative branch and the judiciary are separate and co-equal branches of government. The Commission on Courts was established to give the General Assembly adequate time to study legislative proposals that will affect the judicial branch.

III. SUMMARY OF WORK PROGRAM

The Commission met three times during the 2007 interim to study court-related issues.

At the first meeting on September 11, 2007, the Commission heard testimony on or discussed the following topics:

- *The Judicial Technology and Automation Committee (JTAC) update on the electronic protective order registry, the electronic traffic ticket system, and the JTAC case management system.
- *Removing references to the Clerk of the Supreme Court in election related statutes.
- *Expanding jurisdiction concerning the issuance of restricted driver's licenses because of hardship.
- *Allowing magistrates of the Vanderburgh Superior Court to enter final orders or judgments in proceedings involving the small claims docket or protective orders to prevent domestic or family violence. (Currently only magistrates in Allen County and St. Joseph County have these powers.)

At the second meeting on October 1, 2007, the Commission heard testimony on or discussed the following topics:

- *The need for a sixth three judge panel for the Indiana Court of Appeals.
- *The need for a magistrate in Delaware County.
- *The need for a second judge in Franklin County.
- *Converting 20 commissioners in Marion County to magistrates.
- *The need for a third judge in Miami County.
- *Creating a new judicial circuit for Switzerland County with a full-time judge and a full-time prosecuting attorney.
- *Converting the two judges of the Madison County Court into judges of the Madison Superior Court.
- *Allowing magistrates to enter final orders or judgments in proceedings involving

the small claims docket or protective orders to prevent domestic or family violence.

At the third meeting on October 15, 2007, the Commission heard testimony on or discussed the following topics:

- *Allowing magistrates to enter final orders or judgments in proceedings involving the small claims docket or protective orders to prevent domestic or family violence.

- *Trial Rule 60.5 which allows trial courts to "order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions."

- *Requests for new judicial officers.

- *The Commission's 2007 Final Report.

IV. SUMMARY OF TESTIMONY

The Commission heard testimony from the following witnesses concerning the following topics:

Requests for New Judicial Officers

- *Delaware County: Sen. Sue Errington, Judge Richard Dailey of the Delaware Circuit Court #2, and Mark McKinney, Delaware County Prosecuting Attorney, testified in favor of creating a magistrate position in Delaware County.

- *Franklin County: Judge Steven Cox of the Franklin Circuit Court testified in favor of adding a second judge in Franklin County in 2008 and abolishing the magistrate position created in Franklin County in 2007.

- *Marion County: Rep. Jeb Bardon and Judge Gerald Zore from the Marion Superior Court testified in favor of converting 20 commissioners in Marion County to magistrates.

- *Miami County: Rep. William Friend, Judge Daniel Banina of the Miami Superior Court, and Bruce Embrey, City Attorney for Peru, Indiana, testified in favor of adding a third judge in Miami County.

- *St. Joseph County: Sen. John Broden and Sen. Joseph Zakas testified in favor of creating two new general magistrate positions for the St. Joseph Probate Court to replace two juvenile magistrate positions in the Court.

- *Switzerland County: Monica Hensley, Deputy Prosecuting Attorney for Switzerland County and President of the Switzerland County Bar Association,

and Sen. Jim Lewis testified in favor of creating a new judicial circuit for Switzerland County.

Judge James Humphrey of the Dearborn-Ohio Circuit Court said that Dearborn County and Ohio County "must be taken care of" when considering the creation of a new circuit for Switzerland County. He stated that Ohio County currently does not need a "stand alone court."

Dillon Dorrell from the Ohio County Council stated he did not object to the creation of a judicial circuit for Switzerland County, but he said Ohio County was "unique" and asked the Commission to "listen to our concerns and input" before making any changes to their current court system. He said that Ohio County currently could not afford a stand alone court.

*Indiana Court of Appeals: Judge John Baker, Chief Judge of the Indiana Court of Appeals (Court), testified concerning the creation of a sixth three judge panel for the Court. Judge Baker stated that the number of cases the Court had to deal with was increasing every year which meant that, with the same number of judges, the amount of time a judge could devote to each case was declining every year. He said the General Assembly had to decide what kind of Court the State of Indiana should have.

Madison County Courts

Judge Tom Clem of the Madison County Court #2 and Judge David Hopper of the Madison County Court #1 testified in favor of converting the two judges of the Madison County Court into judges of the Madison Superior Court.

Judicial Technology and Automation Committee (JTAC) Update

Mary DePrez, Director and Counsel for Trial Court Technology for the Judicial Technology and Automation Committee (JTAC) stated JTAC was currently involved in developing a new electronic protective order registry. She stated this new protective order registry would be available in all counties in Indiana by the end of 2007.

Ms. DePrez stated JTAC was also helping to develop a new electronic traffic ticket system. She said the data from the tickets would be electronically transferred to all appropriate federal, state, and local agencies. Ms. DePrez said statewide deployment of the system would begin in the fall of 2007 and Indiana State Police officers should be issuing all their tickets using this system by the end of 2007.

Justice Frank Sullivan, Jr. of the Indiana Supreme Court, Chairperson of JTAC, stated the principal undertaking of JTAC was to develop and implement a "21st century case management

system (CMS)" that would be electronically connected to all courts in Indiana. Justice Sullivan said that, since the CMS project had begun, JTAC had "parted ways" with its initial vendor. However, he said the Supreme Court had entered into a contract this summer with Tyler Technologies to provide and implement its Odyssey software for the CMS project. He said he was happy with the working relationship between Tyler Technologies and JTAC. Justice Sullivan also said JTAC would start with CMS pilot projects in the Monroe Circuit Court and the Washington Township Small Claims Court in Marion County.

Clerk of the Supreme Court

The Commission discussed removing references to the Clerk of the Supreme Court from statutes concerning compensation of elected officials and annual economic interest statements filed by judicial officers or candidates for judicial office who are subject to election or a retention vote. Chief Justice Randall Shepard of the Indiana Supreme Court stated he felt this legislation was basically technical in nature and necessary since the Clerk is no longer a statewide elected official and is now appointed by the Chief Justice.

Hardship Driving Licenses

Judge Michael Witte of the Dearborn Superior Court discussed expanding jurisdiction for the issuance of restricted driver's licenses because of hardship. He stated IC 9-24-15-4 currently requires a petition for a hardship driving license to be filed only in a circuit court. He said this statute should be amended to allow the petition to be filed in the circuit court or superior court of the county in which the petitioner resides or, if at the time a petition is filed the petitioner is a defendant in a pending case concerning the operation of a vehicle while intoxicated, the petitioner is on probation after being convicted of operating a vehicle while intoxicated, or the petitioner's driving privileges have been suspended after the petitioner was convicted of committing a controlled substance offense, the petition should be filed only in the circuit court or superior court in which the action is pending or was resolved.

Powers of Magistrates To Enter Final Orders or Judgments Involving Small Claims or Protective Orders to Prevent Domestic or Family Violence

Judge Stanley Levine from the Allen Superior Court said allowing magistrates in Allen County to perform these duties had worked well. He stated approximately 27,000 new small claims cases were filed in Allen County in 2006. He said the courts there could not operate without the magistrates performing these functions.

Magistrate Jennifer DeGroote from Allen County stated that approximately 3,000 orders for protection were issued in Allen County last year. She said she could not imagine how the Court could serve the number of people it does every year without the magistrates exercising these powers.

A statement submitted to the Commission by Judge John Marnocha of the St. Joseph Superior Court said, "I believe I speak for the entire St. Joseph Superior Court when I say that the additional powers granted our magistrates to enter final judgments and orders has worked well. It is particularly important to litigants that they have a final decision at the time that it is made, rather than waiting for a judge to approve the recommendation of the magistrate."

Trial Rule 60.5 Mandate of Funds

Lilia Judson, Executive Director of the Indiana Supreme Court Division of State Court Administration (Division), stated the vast majority of court mandated expenditures from 2004 to 2006 had gone for pauper and indigent defense expenses, psychological and medical examinations, and the payment of special prosecutors.

Ms. Judson said the Division could find only five instances from 2004 to 2006 involving mandated court staff salaries. She stated that the Indiana Supreme Court handed down two cases in late September 2007 from Clark County and Montgomery County involving mandated funds and staff salaries. She said these cases indicate how the Supreme Court will continue to deal with local disputes concerning mandates.

V. COMMITTEE FINDINGS OF FACT AND RECOMMENDATIONS

The Commission made the following findings of fact and recommendations:

1. The Commission recommended that references to the Clerk of the Supreme Court should be removed from statutes concerning compensation of elected officials and annual economic interest statements filed by judicial officers or candidates for judicial office who are subject to election or a retention vote. The Clerk ceased being a statewide elected office as of January 1, 2007, and is now appointed by the Chief Justice. (Approved by a unanimous show of hands.)
2. The Commission recommended that a petition for a hardship driving license should be allowed to be filed in the circuit court or superior court of the county in which the petitioner resides or, if at the time a petition is filed the petitioner is a defendant in a pending case concerning the operation of a vehicle while intoxicated, the petitioner is on probation after being convicted of operating a vehicle while intoxicated, or the petitioner's driving privileges have been suspended after the petitioner was convicted of committing a controlled substance offense, the petition should be filed only in the circuit court or superior court in which the action is pending or was resolved. Current law states the petition may only be filed in the circuit court of the county in which the petitioner resides. (Approved by a unanimous show of hands.)
3. The Commission recommended allowing magistrates statewide to enter final orders or judgments in proceedings involving the small claims docket or protective orders to prevent domestic or family violence. (Approved 11 to 0 by show of hands with one abstention.)

4. The Commission recommended adding a second judge to the Franklin Circuit Court and abolishing the Circuit Court magistrate position. (Approved 11 to 0 by show of hands with one abstention.)
5. The Commission recommended converting the two judges of the Madison County Court into the fourth and fifth judges of the Madison Superior Court. (Approved 11 to 0 by show of hands with one abstention.)
6. The Commission recommended adding a second judge to the Miami Superior Court. (Approved 11 to 0 by show of hands with one abstention.)
7. The Commission recommended abolishing the Jefferson-Switzerland Circuit Court with Jefferson County retaining the current joint circuit court judge in its own judicial circuit, creating a new judicial circuit for Switzerland County, abolishing the Ohio-Switzerland Superior Court, and creating a new magistrate position for the Dearborn-Ohio Circuit Court. (Approved 11 to 0 by show of hands with one abstention.)
8. The Commission recommended creating two new general magistrate positions for the St. Joseph Probate Court to replace two juvenile magistrate positions in the Court. (Approved 11 to 0 by show of hands with one abstention.)
9. Rep. Phil Hoy, Chairperson of the Commission, and Sen. Richard Bray, Vice Chairperson of the Commission, **stated that, since the Indiana Supreme Court handed down two decisions in late September 2007 involving mandated funds and staff salaries, they did not think it was necessary for the Commission to do anything further at this time concerning Trial Rule 60.5 and that this issue should continue to be worked out in the court system.**

WITNESS LIST

September 11, 2007, Meeting

Mary DePrez, Director and Counsel for Trial Court Technology, Judicial Technology and Automation Committee (JTAC)
Donna Edgar, Project Manager, JTAC
Dave Steward, JTAC
Justice Frank Sullivan, Jr., Indiana Supreme Court, Chairperson of JTAC
Judge Michael Witte, Dearborn Superior Court

October 1, 2007, Meeting

Judge John Baker, Chief Judge of the Indiana Court of Appeals
Judge Daniel Banina, Miami Superior Court
Rep. Jeb Bardon
Judge Tom Clem, Madison County Court #2
Judge Steven Cox, Franklin Circuit Court
Judge Richard Dailey, Delaware Circuit Court #2
Dillon Dorrell, Ohio County Council
Bruce Embrey, City Attorney, Peru, Indiana
Sen. Sue Errington
Rep. William Friend
Monica Hensley, Deputy Prosecuting Attorney for Switzerland County, President of the Switzerland County Bar Association
Judge David Hopper, Madison County Court #1
Judge James Humphrey, Dearborn-Ohio Circuit Court
Sen. Jim Lewis
Mark McKinney, Delaware County Prosecuting Attorney
Judge Gerald Zore, Marion Superior Court

October 15, 2007 Meeting

Jennifer DeGroote, Magistrate, Allen County
Dillon Dorrell
Monica Hensley
Judge James Humphrey
Lilia Judson, Executive Director, Indiana Supreme Court Division of State Court Administration
Judge Stanley Levine, Allen Superior Court